IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

WEDNESDAY, THE 4TH JULY 2007 / 13TH ASHADHA 1929

CRL.A.No. 1125 of 2001()

CC.80/2000 of CHIEF JUDICIAL MAGISTRATE COURT, THODUPUZHA

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APPELLANT:

R. PRADEEP, NEELAGIRI TRADERS,
JYOTHI SUPER BAZAR, THODUPUZHA.

BY ADV. SRI.T.C.ULAHANNAN

RESPONDENTS:

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1. BALAKRISHNAKURUP, CHITHRA BHAVAN,
PARA JUNCTION, KUMARAMANGALAM P.O.,
THODUPUZHA.

2. STATE OF KERALA REP. BY THE
PUBLIC PROSECUTOR, HIGH COURT,
ERNAKULAM.

R1- BY ADV. SRI.M.ABILASH

R2- BY P.P.SRI. PUZHAKKARA MUHAMMED

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 04/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. THANKAPPAN, J.

CRL.A.NO.1125 OF 2001-B

Dated this the 4th day of July, 2007.

JUDGMENT

This appeal is filed against the order passed under Section 256(1) of the Code of Criminal Procedure. It is stated in the order impugned that the complainant not being present in person, the accused is acquitted under Section 256 of the Cr.P.C. The learned counsel appearing for the petitioner/appellant submits that the petitioner was diligent in prosecuting the matter and he became absent on 20th September, 2001 only due to the death of his grandmother and this matter was informed the counsel also. In spite of the above fact was informed the court, the trial court passed the impugned order. It appears from the order that the learned trial magistrate had not complied the dictum laid down by this Court in **G.F.S. Chit & Loans (P) Ltd. v. Rajesh (2006 (3) KLT 825)** and **Don Bosco v. Partech Computers Ltd (2005(2) KLT 1003)**. The magistrate did not apply his judicial discretion with the required judicial caution while dismissing the complaint and acquitting the accused. That apart, as per the judgment of the Apex Court reported in **Associated Cement Co. Ltd. v. Keshvanand** [1998 (1)

KLT 179 (SC)] the Apex Court had categorically held that the provision of Section 256 can be invoked for acquitting an accused only under a circumstance in which the court was not in a position to proceed with the case and absence of the petitioner/appellant was so fatal.

In the above circumstances, it is only proper for this Court to set aside the order passed by the trial court and the matter be remanded to the trial court for a fresh consideration. Accordingly, the order impugned is set aside and the matter is remanded back to the trial court and the trial court is directed to proceed with the matter afresh from the stage at which the order impugned has been passed. The parties shall appear before the court below on 18.8.2007.

K. THANKAPPAN, JUDGE.

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K. THANKAPPAN, J.

CRL.A.NO.1125 OF 2001

JUDGMENT

4th July, 2007.